has been argued on behalf of the workmen that the manager of the respondent company has admitted that both pipe seamers and packers belonged to the category of unskilled labour and therefore the seniority of packers should also have been taken into consideration while effecting retrenchment of pipe seamers. At one stage during the arguments I was inclined to agree with this contention but on deeper consideration I find that this contention is not valid. The wage boards have divided workmen into the broad categories of 'unskilled', 'semi-skilled', 'skilled' and 'highly skilled'. Take for instance the case of turners and fitters employed in a factory. They belong to the category of 'skilled labour' but are doing quite different works. Therefore if a fitter becomes surplus in a factory, the management cannot be asked to retrench a turner whose period of service is less than that of the fitter. Similarly in the broad category of 'unskilled' different workmen do different kinds of work. In the present case, there are packers who do the work of packing and there are pipe seamers who do the work of seaming. That does not mean that if a pipe seamer becomes surplus, the management should turn out a packer who is junior in service as compared to the pipe seamer. Watchmen and *malies* also belong to the category of 'unskilled'. Suppose a concern employs pipe seamers and also watchmen and gardeners. It could not be asked to retrench a watchman or a gardener in place of a pipe seamer simply because they were junior in service to the pipe seamer. I therefore do not find any force in the contention of the workmen that some packers who are alleged by them to be junior in service to the pipe seamer should have been retrenched first in place of the pipe seamer.

It was next contended on behalf of the workmen that under rule 76 of the Industrial Disputes (Punjab) Rules, 1958, the list of seniority should have been displayed by the management a week before the actual retrenchment and that in this case it was displayed only on the date of retrenchment. The seniority list of pipe seamers (Ex. RP/3) has not been disputed before me. The manager of the respondent company has proved it with reference to the relevant record. He has said that Lakshmi Chand, Johri and Balmukand were senior in service to Shri Daya Ram as pipe seamers. No evidence to the contrary has been led on behalf of the workmen and I have no reason to disbelieve the testimony of the manager of the respondent company on this point. In these circumstances, I do not think that the omission of the management in not displaying the seniority list Ex. RP/3 a week in advance of the date of retrenchment makes the retrenchment invalid. It was next argued that the management did not give any notice in the prescribed form to the Government under section 25 F (c) of the Industrial Disputes Act, 1947 and therefore the retrenchment of Shri Daya Ram is invalid. 1960-I-LLJ-802 was cited as an authority in support of the contention. The workmen have not proved that the prescribed notice was not sent by the management to the Government. In their statement of claim they have pleaded specific grounds on which the retrenchment was alleged to be invalid. This ground is not mentioned in the statement of claim. Nor the manager of the respondent concern was put any question on this subject in cross-examination by the workmen. The workmen have therefore failed to prove that the management did not send the requisite notice to the Government and their contention in this regard cannot prevail. There is no evidence on record that the management have victimised Shri Daya Ram. The management have produced Shri O. P. Shingla one of the partners of M/s Indian Conduit Industries Panipat, for whom the respondent factory works. He has stated that amount of work which they could provide to the respondent factory during the relevant period was much less than the normal amount and therefore retrenchment effected by the respondent concern was justified. For all these reasons I hold that the retrenchment of Shri Daya Ram pipe seamer was justified and legal and he is not entitled to any relief.

As Shri Madan Lal's retrenchment has been held to be invalid, he should be deemed to have been reinstated in service with continuity of service from the date of his retrenchment, viz., 15th July, 1966. It is a common ground between the parties that he has already been taken back in service with effect from 20th November, 1966. He will not be entitled to any back wages/compensation for the period 15th July, 1966 to 20th November, 1966. This was agreed to by the parties in the settlement arrived at between them as a result of which this case has been referred to this Court.

In the circumstances of this case, the parties are left to bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour, as required under section 15 of the Industrial Disputes Act, 1947.

HANS RAJ GUPTA,
Presiding Officer,
Labour Court, Rohtak.

CAMP: KARNAL:
Dated 16th March, 1967

The 27th/28th March, 1967

No. 2272-3Lab-67/6362.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Indian Landsberg Implements Corporation (P) Ltd., Faridabad.

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 61 of 1966

between

THE WORKMEN AND THE MANAGEMENT OF M/S INDIAN LANDSBERG IMPLEMENTS CORPORATION (P) LTD., N.I. T., FARIDABAD

Present—

Shri Amarjit Singh claimant with Shri Ashok Kumar on behalf of the workmen.
Shri S.L. Gupta on behalf of the management.

AWARD

An industrial dispute having arisen between the workmen and the management of M/s Indian Landsberg Implements Corporation (P) Ltd., Fatridabad, the Government of Haryana by means of their Gazette notification No. 56-SFIII-Lab-66/1951, dated 1st December, 1966 and in exercise of powers conferred upon them by Section 10(1)(c) of the Industrial Disputes Act, 1947 have referred to this Court for adjudication the matter mentioned below:—

Whether the dismissal of Shri Amarjit Singh, Turner is justified and in order ? If not, to what releif/ exact compeosation he is entitled ?

Usual notices were issued to the parties and in response thereto, the workmen filed a statement of claim and the respondent management filed their written statement denying the claim of the workmen. It was pleaded on behalf of the workmen that the claimant Shri Amarjit Singh has been victimised by the management on account of his trade union activities. It has been stated that the claimant has been falsely implicated at the instance of the Supervisor, Shri N.S. Bhutani, whom he refused to oblige a few days before the alleged occurance by giving him a lift on the claimants' cycle. It is stated that no proper charge-sheet has been given to the claimant and the allegations contained in the charge shheet , dated 29th August, 1966 Exhibit (M/2) are vague and the enquiry officer has not conduted the enquiry in a fair and impartial manner. It is pleaded that the finding of the enquiry officer is perverse and mala fide. The charge of manahandling and abusing Shri N. S. Bhutani is denied by the claimant. It is further pleaded that the order of dismissal in this case is illegal , null and void as it has been passed in violation of the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947.

The pleadings of the workmen are denied by the management. It is stated that a proper, fair and impartial eqnquiry was held against the workmen concerned and he has been dismissed on the charges against him having been proved.

The following issues were framed in the case :—

(1) Whether the claimant Shri Amarjit Singh has been victimised by the management on account of his trade union activities ?
(2) Whether the enquiry held by the management is vitiated on the ground mentioned in the statement of claim of the workmen ?
(3) Whether the termination of services of the claimant is in violation of the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947 and if so what is its effect ?
(4) Whether the finding of the enquiry officer is perverse ?
(5) If any of the above issues are decided against the management whether the termination of services of the claimant is justified and in order ?
(6) Relief.

The first four issues were treated as preliminary issues and evidence of the parties was recorded on those issues and arguments heard on them.

Issue No. 1.—Excepting the solitary statement of the claimant Shri Amarjit Singh, no other evidence has been produced by the workmen in this case. All that the claimant has said in his statement is that previously he used to be the cashier of the union and now he is a member of the union. He alleges to have been an active member of the union for the last two and a half years and yet no action has ever before been taken by the management against him. There is no evidence on record on the basis of which a finding can be given that the management have mala fide dismissed the claimant because of his trade union activities. No victimisation has been proved. Issue No. 1 is decided against the workmen.

Issue No 2.—It is admitted that the letter, dated 29th August 1966 (Ex. M/2) containing the charge against the claimant of man-handling and abusing on 25th August, 1966, the supervisor Shri N.S. Bhutani was received by the claimant and a further letter , dated 30th August, 1966 asking him to submit his explanation was also received by him from the management. It is futher admitted that the claimant submitted to the management his explanation , dated 5th September, 1966 to the allegations made against him in the charge-sheet, dated 29th August, 1966. This explanation is Ex. M/4 and the claimant denies the accusation against him regarding Shri N.S. Bhutani . In his explanation he has described the accusation as fabricated and baseless. He states that Shri N.S. Bhutani had always been cutting in appropriate jokes with the claimant but because he was the claimant's officer and as such the claimant out of respect for him had always kept silent. He states that it is possible that the management may be harrassing him on account of his union activities and because his case for annual increment against the management had been penndingwith the Labour Inspector. The management were not satisfied with this explanation and Ex. M/5 is the intimation regarding appointment of enquiry officer and date and place of enquiry sent to him. The enquiry has been held by Shri K.L. Malhotra an officer of the Goodearth Group of Companies. The parties have produced their witnesses and the opposite side has cross-examined them at length. The claimant was present throughout the enquiry with his representative, Shri Amar Singh. Every page of the enquiry proceedings has been signed by him and his representative and a copy of the day's proceedings has always been supplied to the claimant the same day. The cross-examination of the witnesses of the parties has been recorded clearly in the form of questions and answers. At the end of the enquiry , the enquiry officer has written a reasoned report discussing the evidence and has found the claimant guilty of man-handling and abusing the supervisor, Shri N.S. Bhutani. Ex. M/7 is the report of the enquiry officer and Ex. M/8 is the mangement's order dismissing the claimant from service. Ex. M/9 is the letter, dated the 10th October, 1966 under which the claimant Shri Amarjit Singh was informed of his dismissal.

One of the objections to the validity of the enquiry that has been argued before me is that charge contained in Ex. M/2, the letter dated 29th August, 1966 is too vague and no details have been given therein as to how the claimant man-handled Shri Bhutani and abused him. It is stated that the letter, dated 29th August, 1966

had promised a charge sheet in due course of time but no charge sheet was sent to the claimant after 29th August, 1966. The management's position is that the charge contained in the letter, dated 29th August, 1966 gives enough idea of the accusation and therefore repetition of the allegations in the letter, dated 29th August, 1966 would merely have amounted to duplication and therefore the management by their letter, dated 30th August, 1966 asked the claimant to submit his explanation to the allegations contained against him in the letter, dated 29th August, 1966 itself. The claimant admits the receipt of the management's letter, dated 30th August, 1966 and his explanation dated 5th September, 1966 (Ex. M/4) in so many words says that that was his explanation to the allegations made against him in the management's letter, dated 29th August, 1966. The enquiry started on 13th September, 1967 and on that date the only proceeding that took place was a statement of allegations against the claimant made by the representative of the management. This statement contains full details of the manner in which the claimant was alleged to have manhandled Shri Bhutani. The next sitting of the enquiry was held a week later, i.e., on 19th September, 1966. On this date only the examination in chief of Shri N. S. Bhutani who is alleged to have been man handled by the claimant was recorded. This examination in chief contains full details of the manner in which the claimant is stated to have manhandled the witness. The case was adjourned to 25th September, 1966 for the cross-examination of Mr. Bhutani by the claimant and his representative. He was cross-examined on two days on 25th September, 1966 and 26th September, 1966 and after reading this cross-examination in form of questions and answers covering closely written six foolscape pages, I can say that most of it was irrelevant and should have been disallowed. Assuming therefore that the contention of the claimant that the accusation against him contained in the letter, dated 29th August, 1966 was vague is correct, the claimant was in no way adversely affected because the full details were known to him on 13th September, 1966 and gain on 19th September, 1966 and he cross-examined the complainant, Shri N.S. Bhutani a week after his examination was recorded. In his explanation, dated 5th September, 1966 (Ex. M/4) the claimant has not complained against any vagueness in the charge against him. In these circumstances, the objection raised on behalf of the workmen cannot be said to have vitiated the enquiry conducted against the claimant in this case.

The second objection that has been raised is that a copy of the complaint made by Shri N.S. Bhutani against the complainant was not supplied to the claimant. The claimant made an application on 13th September, 1966 to the enquiry officer. This is Ex. W/1 and in this application the claimant asked for the following facilities:—

1. A copy of the complaint of Shri N.S. Bhutani should be supplied to him.
2. A list of the witnesses to be produced against him by the management should be supplied to him.
3. He should be allowed to bring a representative of the union with him who would cross-examine the witnesses of the management.
4. The enquiry should be conducted in Hindi and a copy of the proceedings of the enquiry for a particular day should be supplied to him the same day.
5. He should be given an opportunity to produce his witnesses in defence.

It was conceded before me during the arguments that the last three facilities demanded by the claimant were provided by the enquiry officer. The enquiry officer in his testimony before this Court has stated that the complaint made by Shri N.S. Bhutani against the claimant was read over to the claimant and his representative on 13th September, 1966. This fact was not denied before me on behalf of the workmen. The complaint was read over during the proceedings and was placed on the enquiry file. This was sufficient compliance with the principles of natural justice. The claimant and his representative felt contented by this course and if they still felt that a copy of the complaint must have been supplied to them they could have insisted for the copy and the enquiry officer would have given it to them. As the complaint had been placed on the enquiry file, it was also open to the claimant to inspect the file and have a copy of the same made out. I do not think that the non-supply of the copy in the particular circumstances of this case has resulted in any way in the denial of justice to him and therefore the enquiry cannot be said to be vitiated on that account. As regards the list of witnesses of the management it is said that only the complainant Shri N.S. Bhutani and one witness Shri Sham Lal were to be produced by the management and their names were told to the claimant and his representative on 13th September, 1966. I decide issue No.2 against the workmen and hold that the claimant has been dismissed as a result of a fair and proper enquiry held against him.

*Issue No.*3. An industrial dispute between the workmen and the management of the respondent concern regarding grant of dearness allowance is said to have been pending before the labour court Jullundur at the time the claimant Shri Amarjit Singh was dismissed from service. It is contended that inasmuch as the management violated the provisions of Section 33 (2) (b) of the Industrial Disputes Act, 1947 by not giving the claimant one month's wages and applying to the labour court Jullundur for approval of their action in dismissing the calimant, the order of dismissal is illegal, void and in operative. The law on the point is now quite clear that failure of the management to comply with the provisions of Section 33 (2) (b) of the Industrial Disputes Act, 1947 does not by itself render the order of dismissal passed by them null and void and in operative and if the order of dismissal is challenged by means of a complaint under Sectoin 33-A or in an industrial dispute under Section 10 of the Industrial Disputes Act, 1947, the labour court can deal with it. Reference in this connection may be made to the following authorities:—

1. 1959-II-LLJ-666 (SC)
2. 1960-I-LLJ-337 (Mad)

Issue No. 3 is, therefore, decided against the workmen.

Issue No. 4—This court cannot sit as a court of appeal against the finding of the enquiry officer. He was well within his rights to believe the witnesses produced by the management and disbelieve those produced by the defence. No *mala fide* on the part of the enquiry officer has been proved by the workmen. In his report he has discussed the evidence produced before him and has held the management's version to have been proved. Small discrepancies here and there cannot vitiate his finding. I am satisfied that his finding cannot be said to be perverse. Issue No. 4 is therefore decided against the workmen.

In view of my finding on issue No. 2 that the claimant has been dismissed by the management as a result of a fair and proper enquiry held against him, his dismissal cannot be challenged on merits before this Court. The dismissal of the claimant by the management therefore is justified and in order and the claimant, Shri Amarjit Singh is not entitled to any relief.

The parties will bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour as required under Section 15 of the Industrial Disputes Act, 1947.

Dated 19th March, 1967

HANS RAJ GUPTA,
Presiding Officer,
Labour Court, Rohtak.

No. 2335-3Lab.67/6509.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of Messrs Gedore Tools India, Private Ltd., Faridabad :—

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 48 of 1966

between

THE WORKMEN AND THE MANAGEMENT OF MESSRS GEDORE TOOLS INDIA, PRIVATE LTD., FARIDABAD

Present—

Shri Dashrath Parshad, claimant in person.

Shri J.P. Chaturvedi on behalf of the management.

AWARD

The Government of Haryana by means of their gazette notification No. SF3-3Lab-66/317, dated 16th November, 1966 and in exercise of the powers conferred upon them by Section 10(1)(c) of the Industrial Disputes Act, 1947, have referred to this Court for adjudication the following dispute between the workmen and the management of Messrs Gedore Tools India, Private Ltd., Faridabad :—

Whether the termination of services of Shri Dashrath Parshad is justified and in order ? It not, to what relief he is entitled ?

Usual notices were issued to the parties and in response thereto the workmen filed a statement of their claim and the management filed their written statements denying that claim. The workmen's case is that the claimant Shri Dashrath Parshad went to his village in U.P. after getting his leave sanctioned for the period 11th April, 1966 to 4th May, 1966 and that during this period he fell ill there and sent an application accompanied by a medical certificate from a registered medical officer of a Government Dispensary requesting for extention of leave for one month. It is stated that he reported for duty at Faridabad on 8th June, 1966 and submitted a medical certificate of fitness from the same medical officer who had issued him the original certificate but that he was told by the management that his name had been struck off the rolls for having unauthorisedly remained absent from duty for more than eight days. He also states that besides the medical certificate of fitness referred to above, he submitted to the management another certificate from the Sarpanch of his village that he had been actually ill there. It is pleaded that in these circumstances, the management were not justified to strike off his name or terminate his services and he was entitled to reinstatement with full back wages and continuity of service.

It is admitted by the management that Shri Dashrath Parshad was on authorised leave for the period 11th April, 1966 to 4th May, 1966 in his home village in U.P. and that they received from him an unsigned application dated 3rd May, 1966 (Exhibit RP/3) accompanied by the medical certificate (Exhibit RP/1) requesting for one month's extension in his original leave. It is stated that for various reasons the management doubted the genuineness of the medical certificate sent by him or that he was really ill and, therefore, did

not sanction the extention of leave applied for and informed him accordingly by means of their registered letter dated 6th May, 1966 (Exhibit RP/4). The cover (Exhibit RP/5) containing this letter was received back from the postal authorities with the remarks that "the family members say that Dashrath Parshad is sick and admitted into some hospital". It is stated that when the claimant reported at the factory on 9th June, 1966, he was asked to produce a certificate of admission to and discharge from the hospital or otherwise his plea of illness could not be admitted. It is claimed on behalf of the management that under standing order 8(6) of the certified standing orders applicable to the respondent factory, the claimant's name was automatically removed from the rolls after eight days of his un-authorised absence after the expiry of his sanctioned leave. It is denied that the claimant produced any certificate from the Sarpanch of his village at any stage to the management. It is maintained that as the claimant failed to satisfy the management that he was really ill by producing the certificate of admission or discharge from the hospital concerned, the management did not reconsider his case and their action was quite in order under the certified standing orders of the respondent factory. The management also raised certain preliminary objections to the competency of the present reference and pleaded that the reference had been made by the Government on a demand notice dated 4th July, 1966 by the General Mazdoor Union, Faridabad, which was neither recognised by the management nor representative of the workmen of the respondent factory. It was pleaded that as the claimant Shri Dashrath Parshad had not himself moved this Court or the State Government for the resolution of the dispute under the Industrial Disputes Act, 1947, the reference was illegal, void and incompetent.

The following issues were framed in the case :—

(1) Whether the present reference is not competent for the reasons mentioned in paras 1 to 4 of the written statement of the management ?

(2) If issue No. 1 is decided against the management, whether the termination of services of Shri Dashrath Parshad is justified and in order ? If not, to what relief he is entitled ?

Issue No. 1.—The onus of this issue was on the management. Neither party has led any evidence on this issue and the same must, therefore, be decided against the management on whom the onus of proving it lay. The objections of the management regarding the competency of the present reference are not valid otherwise also. The recognition of a union by a certain management is not a condition precedent to the union being able to raise an industrial dispute in respect of any workmen of that management. Under the amended Industrial Disputes Act, 1947, it is not even necessary now that the individual should have the backing of a union before raising an industrial dispute. The question whether the union in question is or is not representative of the workmen of the respondent factory is, therefore, immaterial. The individual can give his power of attorney to the union of which he is a member, that is permissible under Section 36 of the Industrial Disputes Act, 1947. The heading of the demand notice dated 4th July, 1966 shows that the parties to the dispute are the claimant Shri Dashrath Parshad through the union as one party and the management of the concern as the other party. The general secretary of the union could sign it as the claimant had given his power of attorney to the union. The plea that the claimant cannot raise the dispute because he had refrained from replying to the management's letter dated 10th June, 1966 had no substance at all. Issue No. 1 is, therefore, decided against the management.

Issue No. 2.—Exhibit RP/9 is a copy of the certified standing orders applicable to the respondent factory. Order No. 8 deals with the subject of 'grant of leave' and is reproduced below :—

8. *Grant of Leave.*—(a) A workman desiring leave of absence shall submit his application for leave in advance on the prescribed form to the time-keeper or any other person authorised by the Manager in this behalf for necessary action. In case the the leave is sanctioned, the workman will be issued with a leave pass.

(b) If a workman after proceding on leave desires an extension of leave, he shoud make an application in writing for the purpose, to the Manager and must allow for sufficient margin of time during which the reply of his application can be communicated to him. Under no circumstances, except some accident seroious illness or some unforeseen events which are explained by the workman to the satisfaction of amnagement, the workman should remain absent on leave unless it is sanctioned and the decision to this effect has been conveyed to him in writing.

(c) *Over Stay.*—If a workman remains absent beyond the period of leave originally granted or subsequently extended, he shall be deemed to have left employment without notce and unless he returns within 8 days of the expirey of leave and gives explanation to the satisfaction of the Manager of his inability to return in time, his name would be automatically removed from the Rools of the Company.'

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The management's case is that for good reasons they did not believe that the claimant had in fact been ill and believed that he had produced the false medical certificate (Ex. RP/1) to get extension of leave, which he thought he had no chance otherwise to get. It is contended that as the extension of leave was not granted, his absence after 4th May, 1966 became un-authorised and under standing order No. 8 (c) he is to be deemed to have left service without notice and his name was automatically removed from the rolls of the company on the expiry of eight days of his unauthorised absence without giving any satisfactory explanation to the satisfaction of the mangement of his inability to return in time. The contention of the workman is that if a workman produces a certificate of illness from a registered medical practitioner, the mangement has no option but to accept the fact of illness of the workman concerned and they are not competent to challenge such a certificate if produced by the workman. Reliance is placed for this contention on rule 96 of the Punjab Factory Rules, 1952. I have carefully read this rule and I do not find any justification for putting such an interpretation on this rule. This rule empowers the mangement to require the workman to produce a medical certificate from a registered medical practitioner or from a registered or recognised vaid or Hakim or to produce other reliable evidence to prove that he was actually ill during the period for which the leave was to be availed of. It does not say that the management can never challenge the evidence of illness produced by the workman. To my mind the real question in such cases is whether the action of the management in disbelieving the certificate or other evidence produced by the workman is *bona fide* or *malafide* and not whether the management has or has not the right to challenge the certificate or evidence produced by the workman. The facts and circumstances of this case do not point out to any *malafide* intention on the part of the management in rejecting the medical certificate produced by the claimant. This certificate (Ex. RP/1) is dated 30th April, 1966 and it certifies that the patient had been having continuous fever and the officer issuing the certificate considered that a period of absence from duty of one month with effect from 5th May, 1966 to 4th June, 1966 was absolutely necessary for the restoration of his health. Although the patient was stated to have been suffering from continuous fever on 30th April, 1966 (the date of the certificate) no rest was considered necessary for him, for the period 30th April, 1966 to 5th May, 1966 but he must have rest for one month from 5th May, 1966. The claimant is said to be under treatment not in his own village "Sukhuana" but in a Government dispensary in another village "Dhebera". Yet the registered cover in which the medical certificate comes is sent from village Sukhuana and not Dhebera. This registered cover is on record in these proceedings and on this cover the claimant gives his address of Sukhuana village. The management sent their letter dated 6th May, 1965 (Ex.RP/4) informing the claimant that they could not put any trust in the certificate sent by him and should report for duty within a week, otherwise his services shall stand terminated. This letter was sent under a registered cover (Ex.RP/5) on the address given on the cover in which the medical certificate had been received. The registered cover (Ex. RP/5) came back with the postal remarks that "the family members say that Shri Dashrath Parshad is sick and is admitted into some hospital". If in fact the claimant had been under treatment in some hospital in another village, his family members must have known it and had the registered cover redirected at the then address of the claimant. Even in his letter, dated 10th June, 1966 (Ex. RP/7) addressed to the management after his return to Faridabad, the claimant has maintained that he was sick in the hospital for the period in question. This is what he says:—

> "That Sir I took leave with effect from 11th April, 1966 to 4th May, 1966 and proceeded to my native village in the district of Gorakhpur. Unfortunately I fell ill there and was forced under the circumstances to get myself admitted in a hospital for treatment. I was in the hospital from 29th April 1966 to 5th June, 1966 and was discharged on 5th June, 1966 with an advice to take rest for three more days, i.e. 5th, 6th and 7th June, 1966".

In view of the above evidence, could it be said that the attitude of the management is asking the claimant to produce his certificate of admission into and discharge from the hospital before they could reconsider his case, was not reasonable ? It has been vehemently conten ed on behalf of the management that the claimant had never been ill and he had obtained the sickness certificate (Ex.RP/1) and the fitness certificate (Ex.RP/2) by unfairmeans. The management have produced Dr. S.C.Gupta their medical officer as their witness in these proceedings. He has deposed that in case of illness, a medical officer would recommend rest with immediate effect and not five days ahead or afterwards as has been done in Ex. RP/1. He has also pointed out to the contrary opinions of the same medical officer in the fitness certificate (Ex. RP/2), dated 5th June, 1966 issued to the claimant. In the main body of the certificate it has been certified that the patient had fully recovered from illness and was quite fit on the date of certificate (5th June, 1966) to resume his duty. Towards the end of the certificate he recommends three days' more rest with effect from 5th June, 1966. It is difficult to place reliance upon such certificates. Neither before the management nor in these proceedings, the claimant has produced any other evidence to prove that he was actually ill during

the period in question. The management denied that he ever submitted to them any certificate from the sarpanch has been proved in these proceedings. The claimant could have produced in these proceedings the doctor who issued him the certificate Ex. RP/1 and RP/2 if he was really sick and under his treatment. This has not been done. No other independent evidence has been led to prove the alleged illness of the claimant.

It appears that after his return to Faridabad, the claimant submitted duplicates of certificates Exhibit RP/1 and RP/2 to the local office of the Employees State Insurance Corporation at Faridabad. The Employees State Insurance Corporation on the basis of these certificates has paid a sum of Rs 70 as sickness benefit to the claimant for the period 7th May, 1966 to 3rd June, 1966. It is in evidence that the empolyees State Insurance Corporation did not make any enquiry regarding the genuineness of these certificates. It is also admitted that no reference was made to the management in respect of the claimant's illness or the grant of sickness benefit to him. It has been contended on behalf of the workmen that as the Employees State Insurance Corporation accepted these certificates, the management should not have rejected them. The management had rejected them long before these were accepted by the Employees State Insurance Corporation. In any case, my attention has not been drawn to any authority which lays down that the management could not disagree with the Employees State Insurance Corporation regarding the acceptance of these certificates.

Lastly, reliance was placed on behalf of the workmen on section 73 of the Employees, State Insurance Act, 1948, Shorn of the portions which in no circumstances can be applicable to the facts of this case, this section reads as follows :—

"73 (1) No employer shall dismiss' discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is under medical treatment for sickness.

(2) No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (1) shall be valid or operative "

Sub-section (2) of section 73. is inapplicable to the present case for the obvious reason that no notice has been issued to the claimant by the management and his name has been automatically removed from the rolls of the Company under standing order 8(c) of the certified standing orders on the expiry of eight days of un-authorised absence from the date on which his sanctioned leave expired. The punishment of dismissal or discharge, etc. is barred under sub-section (1) only "during the period the employee is in receipt of sickness benefit or during the period he is under medical treatment for sickness."

The certificate produced by him has not been believed and it has been found above that he was not under medical treatment for sickness during the period 30th April, 1966 to 5th June, 1966. He has not been dismissed or discharged, etc., during the period he was in receipt of sickness benefit. He was not at Faridabad during the period of his alleged sickness but was in his home district in U.P. He applied for the sickness benefit and the same was given to him long after his name had been removed from the rolls of the respondent company under standing order 8(c). No certificate from the Employees State Insurance was ever submitted by the claimant to the management even after he came to Faridabad on 8th June, 1966 and was asked by the management to give better proof of his alleged illness at home. It is in evidence that no enquiries were made by the Employees State Insurance authorities from the management before making payment for a past period. In these circumstances, Section 73 of the Employees State Insurance Corporation Act, 1948 cannot be said to have rendered the termination of service of the claimant as invalid or inoperative.

Finally, it has been contended that even in respect of un-authorised absence, the claimant should have been given a show cause notice and an enquiry should have been held against him before termination of his services and in not doing so, the management had violated the principles of natural justice and the termination of service was therefore not valid. A similar contention was raised in somewhat similar circumstances before the Calcutta High Court in the case reported as 1962-I-LLJ-64 (Brooke Bond India Private Ltd., versus Sudhir Banjan Ghosh and others) and was repelled by the High Court. In that case, the standing orders of the concern inter alia provided for automatic dismissal of a workman remaining absent without notice for a period exceeding fourteen consecutive days. It also provided that over stayal of leave without sanction would be treated as absence. A workman remained absent for over fourteen days after the expiry of his sanctioned leave and was dismissed by the management in exercise of the powers under the certified standing orders. The application for extension of leave (by a telegram) did not reach the management. The Industrial Tribunal dealing with the case found, as has been found in the present case, that there was no *mala fide* on the part of the management in taking action under the relevant standing orders. However on the grounds that the punishment was extremely harsh and that in observance of the principles of natural justice the management ought to have given

an opportunity to the concerned workman to explain his absence, the industrial tribunal set aside the order of dismissal and directed re-instatement of the concerned workman. Quashing the award of the industrial tribunal in the writ petition preferred by the management, the Calcutta High Court was pleased to observe as follows :—

"The industrial tribunal, having found two things in favour of the management namely :—

(1) that the employer was entitled to dismiss the workman by following the letter of the relevant clause in the standing orders ;

(2) that there was no *mala fides* on the part of the employer in dismissing the concerned workman.

Could not import consideration of harshness and violation of the principles of natural justice in setting aside the order of dismissall."

In view of the above discussion, I decide issue No. 2 in favour of the management and hold that the termination of services of Shri Dashrath Parshad was justified and in order. He is not entitled to any relief from the management in this regard. In the circumstances of this case, the parties will bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour, as required under Section 15 of the Industrial Disputes Act, 1947.

Dated 20th March, 1967.

HANS RAJ GUPTA,
Presiding Officer,
Labour Court, Rohtak.

B. L. AHUJA,
Secretary to Government, Haryana,
Labour and Employment Department.

FINANCE DEPARTMENT

The 22nd/27th March, 1967

No. 2459-TA(IT)-67/2678.—Shri R. L. Gambhir, S.A.S. Senior, Auditor, has been appointed temporarily as Treasury Officer, Ambala, in the scale of Rs. 250—25—500/30—650 with effect from 10th March, 1967 (forenoon).

B. S. MANCHANDA,
Secretary.

HOUSING DEPARTMENT

The 21st March, 1967

No. 963-2Hg-67/7007.—In exercise of the powers conferred by section 27(1)(b) of the Punjab Land Revenue Act, 1887, the Governor of Haryana is pleased to confer on all the Naib-Tehsildars (Ligh) in the State of Haryana the powers of the Assistant Collector, Second Grade, for effecting recoveries of loans advanced under the Low-Income/Middle-Income Group Housing Schemes within the limits of the Dis ricts of their posting.

B. L. AHUJA,
Secretary to Government, Haryana,
Housing Department.

REVENUE DEPARTMENT

The 23rd March, 1967

No. 795-EIII-67/1065.—In exercise of the powers conferred by sub-sections (1) and (2) of section 27 of the Punjab Land Revenue Act, 1887, the Governor of Haryana is pleased to confer upon Shri Jagdip Singh, Tahsildar, Municipal Committee, Bhiwani, the powers of an Assistant Collector, IInd Grade, for the purposes of making recoveries of the Municipal dues under the provisions of the Punjab Municipal Act, 1911, within the local limits of the Municipal Committee, Bhiwani.

SUKHDEV PRASAD,
Deputy Secretary to Government,
Haryana, Revenue Department.

WAR JAGIR

The 22nd April, 1967

No. 3333-JN-III-66/6905.—In exercise of the powers conferred by sections 2 (a) (i) and 3 (1) (a) of the East Punjab War Awards Act, 1948, the Governor of Punjab is pleased to make a grant of War Jagir of the annual value of Rs. 100 (Rupees one hundred only) in favour of Shrimati Bhag, Kaur, widow of Shri Arjan Singh, of village Salimpur Tehsil Narain-garh, District Ambala, subject to such conditions as to its enjoyment as are contained in the Sanad of Jagir granted to her.

This grant will take effect from Kharif, 1964.

(Sd.) . . . ,
Deputy Secretary to Government, Punjab,
Revenue (Settlement) Department.